

Petroleum and Natural Gas Regulatory Board

Case No. Legal/253/2018

In the matter of

KEI-RSOS Petroleum & Energy Pvt. Ltd

.....Review Petitioner

ORDER

22.10.2018

I. Facts of the case

1. PNGRB invited bids for development of CGD network in seven districts/geographical areas including for Yanam GA in the 8th round of the bidding on 22nd November 2016. For Yanam GA, KEI RSOS Petroleum and Energy Pvt. Ltd. (hereinafter referred to as KEI RSOS/Entity) emerged as successful entity.
2. KEI RSOS was issued LoI for Yanam GA vide letter dated 06.03.2018. As per Regulation 10 (1) of PNGRB (Authorizing Entities to Lay, Build, Operate and Expand Local or City Gas Distribution Network) Regulation, 2008, the entity was required to furnish Performance Bank Guarantee (PBG) within 15 days of issue of LOI and complete such other formalities as may be directed by the Board. Hence M/s KEI-RSOS was required to submit the PBG of Rs. 26.4 crore by 21.03.2018. However, vide letter dated 19.03.2018 KEI-RSOS requested for 15 working days' time extension (up to 09.04.2018) for submission of PBG due to financial year ending. The request for extension was sought under Regulation 10 of PNGRB (Authorizing Entities to Lay, Build, Operate and Expand Local or City Gas Distribution Network) Regulation, 2008.


3. As per extant Regulation 10 (1) of PNGRB (Authorizing Entities to Lay, Build, Operate and Expand Local or City Gas Distribution Network) Regulation, 2008 at that point of time Board might extend the date for submission of Performance Bond for a period not exceeding 15 working days. Considering PNGRB's holidays, 15 working days from 21.03.2018 were completing on 13.4.2018. However, entity had sought extension up to 09.04.2018 only, hence vide letter dated 02.04.2018 extension was granted up to 09.04.2018.
4. KEI RSOS did not submit the required PBG by 09.04.2018, instead requested for further time extension up to 21.4.2018 under Regulation 10 (1) of PNGRB (Authorizing Entities to Lay, Build, Operate and Expand Local or City Gas Distribution Network) amendment Regulation, 2018 which provides a time limit of 30 days from LOI with a further extension of 15 days. As per the prevailing Regulation, time extension could be granted only up to 13.4.2018. Accordingly, an extension up to 13.4.2018 was granted to KEI-RSOS.
5. KEI RSOS failed to submit the required PBG of Rs 26.4 Crore by extended date of 13.4.2018. KEI RSOS vide letter dated 13.04.2018 which was delivered through email dated 14.04.2018, referred to the Regulation 9 (1) of PNGRB (Authorising Entities to Lay, Build, Operate and Expand Local or City Gas Distribution Network) amendment Regulation, 2018 wherein PBG for population less than 0.1 million GA is 15 million and requested Board to consider the same for submission as PBG for Yanam GA.
6. As the additional bid bond (ABB) was the bidding criteria for the subject bid and based on the highest additional bid bond (ABB) in the bid i.e.,

6.1 crore for ABB quoted by KEI RSOS, it became the successful entity. As per the extant Regulation, KEI RSOS was required to provide PBG of 4 times the value of Bid bonds which is Rs 26.4 crore [$\{(6.1(\text{ABB})+0.5 (\text{Bid Bond})\} \times 4$].

7. The matter was considered by the Board and it issued an order dated 18.04.2018 for withdrawal of LoI issued vide letter no. PNGRB/CGD/BID/8/2017/GA-Yanam-Bid Evaluation dated 6th March 2018 and action under the provisions of Regulation 10(1) was to be initiated for encashment of the bid bond (including additional bid bond) (Rs. 6.6 crore) and KEI RSOS Petroleum Energy Pvt Ltd was barred from bidding for a period of three years from the date of the order. Further as per the third proviso of Regulation 10 (1), the entire bidding process for Yanam GA was annulled. The bid bond and additional bid bond of Rs. 6.6 crore was encashed.
8. As per the submission made by the entity in its letter dated 19.04.2018, it is stated that the all the required preliminary works has been started as mentioned below:
 - i) KEI-RSOS has made arrangements for a gas tie up and supply from its own DSF fields located in the KG basin adjacent to Yanam CGD and have connected the gas fields to GAIL line in order for delivery of gas in Yanam CGD area.
 - ii) KEI-RSOS has surveyed and located the GAIL tie in connectivity available in Yanam and have commenced discussions with GAIL for a Tie out in the CGD area.
 - iii) KEI-RSOS has ordered the steel pipes required for achieving the Inch KM target, with a reputed manufacture M/s. Maharastra seamless Ltd., and these were ready to delivery.

- iv) KEI-RSOS has made all arrangements for commencement of work on ground with respect to the PNG connections and the CNG stations, soon after receipt of the LOI.
9. Vide letter dated 20.04.2018, KEI-RSOS requested the Board to reconsider its decision and allow them to submit the PBG of Rs 26.4 Crore up to 30-04-2018 to issue LOI for Yanam CGD and to refund the amount upon furnishing the BG.
10. Further, on 01.05.2018 KEI-RSOS submitted the review petition to the Board in which entity has mentioned that there was no delay on the part of the petitioner as it was only due to the financial crisis in the banking sector at that time and not due to any malafide intention on the part of entity and requested for the following to the Board :
- i) to review and recall the order dated 18.04.2018
 - ii) consider the amount of PBG and its validity period as per latest amendments. (15 million rupees and validity up to three years)
11. The review petition was heard on 31.07.2018 by the Board. In order to achieve the larger objective of infrastructure development at the fast pace, the review petition is allowed and the Board's order dated 18.4.2018 is hereby recalled. It is seen that the LOI earlier issued to the entity was cancelled by the Board's Order dated 18.04.2018. The amended Regulations were brought into force on 6.4.2018. Amended Regulations 9 and 10 are beneficial in nature. It is settled law that a beneficial legislation is to be construed liberally. Here, it is clarified that the amended Regulations will not be applicable to the cases which have attained finality prior to 6.4.2018.

12. In the aforesaid facts and circumstances of the case the entity gets the benefit of the amended Regulations. Accordingly, KEI RSOS be allowed to submit the PBG of Rs. 6.6 crores as per the amended Regulation 9 within the period as specified in the amended Regulation 10 of the 2008 Regulations. Thereafter, the authorisation letter (Schedule-‘D’) may be issued to the entity for the Yanam GA. After receipt of the PBG, the amount of bid bond of Rs. 6.6 crore, which was earlier encashed by the Board, be returned to the entity.


(Dr. S.S. Chahar)
Member (Legal)